THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.07.2007

+ **CM NO.11032/2006 & WP (C) 12589/2006**

PUR POLYURETHANE PRODUCTS PVT LTD ...Petitioner

- versus -

DSIDC AND OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr Sunil Gupta, Sr. Advocate with Mr Thomas Joseph
For the Respondent No.1.	:	Mr Sandeep Aggarwal with Ms Neeta Sharma
For the Respondent Nos. 2	:	Mr Parag Tripathi and Mr Jayant Bhushan, Sr. Advocates with Mr Buddy Ranganadhan

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J
CM No. 11032/2006 in WP (C) 12589/2006

1. This application is styled as one based on principles analogous to the provisions of Order 7 Rule 11 CPC. Essentially, this is an application challenging the maintainability of the writ petition filed by the petitioner. The main ground taken by the applicant/ respondent No.1 is that the issues raised in this petition have already been decided by this Court as well as the Supreme Court.

2. The prayer in this writ petition is with regard to allotment of shed No.22, Phase-II, Scheme-II, New Okhla Industrial Complex, New Delhi to the petitioner and to execute such other / further documents necessary for perfecting the title of the petitioner in respect of the said shed. The second prayer is that the respondent be prohibited from evicting the petitioner from the said shed. As indicated above, the learned counsel for the applicant/ respondent No.1 submits that these issues have already been determined by a Division Bench of this Court in WP(C) 3916/1990. A review application was also filed in the writ petition and the same was also rejected. He submitted that the prayer of challenging the eviction order dated 20.11.1990 passed by the Estate Officer as well as the alternative prayer of allotment of the said shed was made before the Division Bench and both the prayers were rejected.

3. By the order dated 03.07.2006, the Division Bench had disposed of WP(C) 3916/1990. An application being CM No. 8513/2006 had been filed on behalf of the petitioner herein seeking recall of the order dated 03.07.2006. The same was disposed of by the Division Bench by a detailed order dated 25.07.2006. In paragraph 10 of the said decision of 25.07.2006, the Division Bench observed as under:-

> 10. .....In the circumstances, since the eviction order dated 20.11.1991, made after the amendment to the writ petition was permitted, became final vis-a-vis the petitioner, the prayer sought for

> allotment of the shed was incapable of being granted and did not survive. Therefore, there is no merit in the first contention of the petitioner."

In paragraph 11, with regard to the allotment of the shed, the Court observed as under:-

> "11. Mr. Munjal next contended that on account of an order dated 3.9.1993, whereby this Court permitted the petitioner to pay the DSIDC a sum of Rs.14,25,000 the petitioner's claim to be allotted a shed still survived. We do not agree....."

The argument with regard to allotment of the shed was also rejected by the Division Bench in the following words:-

> "12. The third contention that notwithstanding all these developments, the petitioner should still be allotted the shed does not appeal to us. We cannot be unmindful of the fact that the eviction order as against the petitioner has become final and as such the main challenge in the writ petition must fail. In view of the subsequent developments, the alternative relief also cannot be granted."

It is clear from these observations and directions made by the Division Bench that the issue of allotment was argued before the Division Bench and the same was rejected.

4. It is pertinent to point out that the petitioner, being aggrieved by the judgment of the Division Bench, filed a Special Leave Petition being SLP (Civil) No.12883/2006. In the said Special Leave Petition the petitioner had filed a synopsis which contained the following argument:-

> "Further the High Court has refused to entertain the prayer of the petitioner for allotment of the shed in the petitioner's name on the ground that the Estate Officer who was holding proceedings to evict the original allottee of this shed, did not treat the petitioner as an authorized occupant. Noteworthy that in this very order, relied upon by the High Court, the Estate Officer had not treated the petitioner as an authorized occupant only because the petitioner did not have any document of allotment in its name, which prayer was pending before the High Court in the writ petition and for which reason the Estate Officer did not order the eviction of the petitioner."

The second ground in the Special Leave Petition also related to the allotment of the shed in question and the said ground reads as under:-

> "For that the Hon'ble High Court was wrong inasmuch as the respondents did not point out on 3.7.2006 that the independent and separate prayer of allotment of the shed in question to the petitioner in its own name is based on the scheme of the DSIDC wherein similarly placed persons have been granted such relief. Despite the petitioner having pointed this out subsequently to the High Court on 19.07.2006, the High Court vide impugned judgment dated 25.7.2006 again failed to consider the same on a flimsy unexplained ground that it did not appeal much."

The Special Leave Petition was dismissed by the Supreme Court by an order dated 14.08.2006. Insofar as I am concerned, the issue of allotment of the shed stands concluded. The petitioner has now filed this writ petition once again raising the issue of allotment of the shed as well as seeking a prohibition against eviction from the said shed. Both these issues stood concluded by the Division Bench, as indicated above. If the petitioner is permitted to continue with this writ petition, then it would amount to this Court permitting the

petitioner to re-litigate. Such a course of conduct is to be frowned upon as indicated in ***K. K. Modi v. K. N. Modi and Others:*** ***(1998) 3 SCC 573***.

5. For all these reasons, I feel that the writ petition is not maintainable. This application is allowed and the writ petition is dismissed with costs.

BADAR DURREZ AHMED
(JUDGE)

July 11, 2007
SR